

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILBER ROSEMAN,

Defendant-Appellant.

UNPUBLISHED

July 24, 1998

No. 195215

Recorder's Court

LC No. 94-012718-02

Before: Sawyer, P.J., and Bandstra and J. B. Sullivan*, JJ.

PER CURIAM.

Defendant was convicted by a jury of one count of first-degree, premeditated murder, MCL 750.316; MSA 28.548, four counts of assault with intent to murder, MCL 750.83; MSA 28.278, and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to life imprisonment without parole for the murder conviction, twenty-five to fifty years' imprisonment for each assault conviction, and two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first argues that he is entitled to a new trial because the jury did not indicate whether it convicted him as a principal or as an aider and abettor. Defendant's argument is somewhat convoluted, and has several facets. However, defendant essentially argues that there is a possibility that he was not convicted by a unanimous jury. We disagree. Under the circumstances of this case, any juror who found defendant guilty as a principal would necessarily have found him guilty as an aider and abettor. See *People v Burgess*, 67 Mich App 214, 220-222; 240 NW2d 485 (1976). Even if the jury could have reached a compromise verdict, we would find no reversible error. See *People v Ewing*, 102 Mich App 81, 89-90; 300 NW2d 742 (1980). Thus, defendant is not entitled to a new trial on this basis. Concurrently, defendant argues that the trial court should have instructed the jury that they could not consider his guilt as a principal. Defendant bases this argument on his allegation that the prosecution admitted that there was insufficient evidence to support his guilt as a principal. After reviewing the record, it is clear that the prosecution never made any such admission. While the prosecutor primarily relied on an aiding and abetting theory, she never excluded the possibility that

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

defendant was guilty as a principal. In any event, defendant failed to raise this issue below, and, finding no manifest injustice, we decline to consider it for the first time on appeal. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993).

Next, defendant argues that there was insufficient evidence to support his convictions on an aiding and abetting theory. He argues that the evidence was insufficient to show that he had the requisite intent for first-degree premeditated murder, and for assault with intent to murder. This argument is utterly without merit. In fact, there was abundant circumstantial evidence of defendant's guilt. Viewed in the light most favorable to the prosecution, the evidence showed that defendant and three other young men were heavily armed and in search of one of the victims. When they located the person they were looking for, they engaged in a fire-fight that left two people dead and at least one other person injured. The testimony regarding defendant's actions before and during the shoot-out was more than sufficient to allow the jury to infer the necessary intent beyond a reasonable doubt.

Defendant next argues that the trial court erred in prohibiting defense counsel from exploring a prosecution witness's criminal history and incarceration status. Defendant contends that he was effectively denied his right to confront the witnesses against him. We find no reversible error. Defendant's argument ignores several important points. First, defendant ignores the fact that the witness did not actually face pending charges. Thus, his argument that further cross-examination would have revealed the witness's bias toward the prosecution in order to gain an advantage with respect to pending charges fails. Second, defendant ignores the fact that the witness acknowledged several times that he was, in fact, already incarcerated. Thus, the jury was already aware that the witness might be seeking favorable treatment from the authorities. Finally, defendant ignores the fact that MRE 609 prevented the admission of the witness's prior convictions for impeachment purposes. It is also worth noting that defense counsel was able to cross-examine the witness with respect to his prior inconsistent statements. The witness also admitted that he was incarcerated, that he participated in the shoot-out, that he was under the influence of marijuana when he spoke to the police, and that he intentionally tried to hide his involvement in the shoot-out by fleeing the scene and hiding his gun. Defense counsel's cross-examination made it quite clear to the jury that this witness had perjured himself, and that he had engaged in violent and illegal activity. Under these circumstances, the trial court properly limited cross-examination of the witness, and any error was harmless.

Finally, defendant argues that the trial court erred in allowing testimony that defendant had stolen the gun that he used to commit the murders, because it was improper "other bad acts" testimony. However, defendant failed to object to this evidence at trial, and, finding no manifest injustice, we decline to review this issue.. *People v Grant*, 445 Mich 535, 545-546; 520 NW2d 123 (1994).

Affirmed.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Joseph B. Sullivan